



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 17

RIN 2900-AP00

Definition of Domiciliary Care

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts as final, with no changes, a proposed rule amending the definition of domiciliary care to encompass VA's Mental Health Residential Rehabilitation Treatment Program (MH RRTP). This rule aligns regulations with VA's administrative decision in 2005 to designate MH RRTP as a type of domiciliary care. We also proposed clarifying that domiciliary care provides temporary, not permanent, residence to affected veterans. We provided a 60-day comment period on this proposed rule and received 4 comments, all of which were generally supportive of the proposed changes. We make no changes based on public comments and adopt the proposed rule as final.

DATES: Effective Date: This rule is effective on [insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jamie R. Ploppert, National Director, Mental Health Residential Treatment Programs (10P4M), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW.,

Washington, DC 20420; (757) 722-9991 extension 1123. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Title 38, United States Code, section 1710(b)(2) authorizes VA to provide needed domiciliary care to veterans whose annual income does not exceed the applicable maximum annual rate of VA pension and to veterans who have no adequate means of support. Prior to the proposed changes to the definition “domiciliary care” was defined at 38 CFR 17.30(b) as the furnishing of a home to a veteran, embracing the furnishing of shelter, food, clothing and other comforts of home, including necessary medical services, as well as travel and incidental expenses pursuant to 38 CFR 70.10. Veterans eligible for domiciliary care include only: those whose annual income does not exceed the maximum annual rate of pension payable to a veteran in need of regular aid and attendance; or those who have no adequate means of support, as this phrase is defined in 38 CFR 17.47(b)(2), who can perform the activities specified in 38 CFR 17.46(b) but who suffer from a chronic disability, disease, or defect that results in the veteran being unable to earn a living for a prospective period. See 38 CFR 17.47(b)(2) and (c).

The domiciliary program is authorized to provide eligible veterans with a home and coordinated ambulatory medical care as needed. Typically, domiciliaries are co-located with VA medical centers or exist as designated bed-settings within the centers.

While the above-referenced statutory definitions and eligibility criteria still apply as do the regulatory criteria of §§ 17.46(b) and 17.47(b)(2), the scope of services furnished under the program has evolved significantly, requiring revision of §§ 17.30(b)

and 17.47(c). We proposed to amend the definition of domiciliary care to reflect that change.

The scope of clinical services available to VA domiciliary residents has necessarily become specialized over time due to the characteristics of the patient populations served by the residential rehabilitation treatment model. In 2005, VA's supervision of domiciliary care facilities was moved from the Office of Geriatrics and Extended Care to the Office of Mental Health Services. In 2010, VA merged domiciliary care facilities and RRTPs (which began in 1995) into one system of residential care under the MH RRTP designation to fully integrate mental health residential rehabilitation and treatment and domiciliary care. MH RRTPs provide comprehensive supervised treatment and rehabilitative services to veterans with mental health or substance use disorders, and coexisting medical or psychosocial needs such as homelessness and unemployment. MH RRTPs identify and address goals of rehabilitation, recovery, health maintenance, improved quality of life, and community integration in addition to specific treatment of medical conditions, mental illnesses, addictive disorders, and homelessness. These services are intended to restore, to the maximum extent possible, the physical, mental, and psychological functioning of veterans receiving residential rehabilitation treatment. VA domiciliaries are used currently for VA's Domiciliary Residential Rehabilitation Treatment Programs; Domiciliary Care for Homeless Veterans Program, Health Maintenance Domiciliary beds program; General Domiciliary or Psychosocial Residential Rehabilitation Treatment Program; Domiciliary Substance Abuse programs; and Domiciliary Post-Traumatic Stress Disorder (PTSD) programs.

On April 6, 2018, we proposed amending the definition of domiciliary care in § 17.30(b) to also include MH RRTP. (83 FR 14804). We also proposed clarifying in both §§ 17.30(b) and 17.47(c) that domiciliary care provides a temporary home, not permanent. This clarification is consistent with VA's long-standing practice of providing domiciliary care as a non-permanent living arrangement for eligible veterans.

We provided a 60-day period in which the public had the opportunity to submit comments on the proposed rule. The comment period ended on June 5, 2018, and we received 4 comments, all of which were generally supportive of the proposed changes. One commenter stated that he supported the effort to provide clear and concise rules regarding the scope of domiciliary care. Another commenter stated that providing domiciliary care consistent with the proposed rule supports the services that homeless veterans need such as mental health, counseling, and substance treatment while providing a chance to implement change in their life and creating realistic timelines to facilitate progress.

We appreciate the comments and believe that the MH RRTP provides important and necessary support to those veterans requiring such services. We make no changes based on public comments.

Based on the rationale set forth in the proposed rule and in this document, VA adopts the proposed rule as final, with no changes.

Effect of rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future

amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This final rule directly affects only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory

Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” which requires review by the Office of Management and Budget (OMB), as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.” VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action and determined that the action is not a significant regulatory action under Executive Order 12866. VA’s impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA’s website at <http://www.va.gov/orpm> by following the link for VA Regulations Published from FY 2004 through FYTD. This rule is not an EO 13771 regulatory action because this rule is not significant under EO 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any

rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.005 - Grants to States for Construction of State Home Facilities; 64.008 - Veterans Domiciliary Care; 64.011 - Veterans Dental Care; 64.012 - Veterans Prescription Service; 64.013 - Veterans Prosthetic Appliances; 64.014 - Veterans State Domiciliary Care; 64.015 - Veterans State Nursing Home Care; 64.024 - VA Homeless Providers Grant and Per Diem Program; 64.026 - Veterans State Adult Day Health Care; 64.033 - VA Supportive Services for Veteran Families Program; 64.035 - Veterans Transportation Program; 64.040 - VHA Inpatient Medicine; 64.041 - VHA Outpatient Specialty Care; 64.042 - VHA Inpatient Surgery; 64.043 - VHA Mental Health Residential; 64.044 - VHA Home Care; 64.045 - VHA Outpatient Ancillary Services; 64.046 - VHA Inpatient Psychiatry; 64.047 - VHA Primary Care; 64.048 - VHA Mental Health clinics; 64.049 - VHA Community Living Center; 64.050 - VHA Diagnostic Care; 64.054 - Research and Development.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental

health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Signing Authority

The Secretary of Veterans Affairs approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on September 19, 2018, for publication.

Dated: September 19, 2018.

Consuela Benjamin,
Regulations Development Coordinator,
Office of Regulation Policy & Management,
Office of the Secretary,
Department of Veterans Affairs.

For the reasons stated in the preamble, Department of Veterans Affairs amends 38 CFR part 17 as follows:

PART 17 – MEDICAL

1. The authority citation for part 17 continues to read as follows:

AUTHORITY: 38 U.S.C. 501, and as noted in specific sections.

Section 17.35 is also issued under 38 U.S.C. 1724.

Section 17.38 is also issued under 38 U.S.C. 101, 501, 1701, 1705, 1710, 1710A, 1721, 1722, 1782, and 1786.

Section 17.125 is also issued under 38 U.S.C. 7304.

Section 17.169 is also issued under 38 U.S.C. 1712C.

Sections 17.380, 17.390 and 17.412 are also issued under sec. 260, Public Law 114-223, 130 Stat. 857.

Section 17.410 is also issued under 38 U.S.C. 1787.

Section 17.415 is also issued under 38 U.S.C. 7301, 7304, 7402, and 7403.

Section 17.417 also issued under 38 U.S.C. 1701 (note), 1709A, 1712A (note), 1722B, 7301, 7330A, 7401-7403, 7406 (note).

Sections 17.640 and 17.647 are also issued under sec. 4, Public Law 114-2, 129 Stat. 30.

Sections 17.641 through 17.646 are also issued under 38 U.S.C. 501(a) and sec. 4, Public Law 114-2, 129 Stat. 30.

Section 17.655 also issued under 38 U.S.C. 501(a), 7304, 7405.

2. Amend § 17.30 by revising paragraph (b) to read as follows:

§ 17.30 Definitions.

* * * * *

(b) Domiciliary care. The term domiciliary care -

(1) Means the furnishing of:

(i) A temporary home to a veteran, embracing the furnishing of shelter, food, clothing and other comforts of home, including necessary medical services; or

(ii) A day hospital program consisting of intensive supervised rehabilitation and treatment provided in a therapeutic residential setting for residents with mental health or substance use disorders, and co-occurring medical or psychosocial needs such as homelessness and unemployment.

(2) Includes travel and incidental expenses pursuant to § 70.10.

(Authority: 38 U.S.C. 1701(4))

§ 17.47 [Amended]

3. Amend § 17.47(c) by removing the word “home” and adding in its place the words “temporary home”.

[FR Doc. 2018-20707 Filed: 9/24/2018 8:45 am; Publication Date: 9/25/2018]